

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

MASTER DOCKET
18-md-02865-LAK

DECLARATION OF NICHOLAS S. BAHNSEN

I, Nicholas S. Bahnsen, an attorney duly admitted to practice law before the courts of the State of New York, hereby declare under penalty of perjury:

1. I am an associate at Kostelanetz & Fink, LLP, counsel for John van Merkenstijn and Basalt Ventures LLC Roth 401(K) Plan. Except as otherwise stated, I am fully familiar with the matters set forth in this declaration.
2. I submit this declaration in support of Defendants' Memorandum of Law in support of their Motion for Summary Judgment and Defendants' Supplemental Rule 56.1 Statement of Material Facts in Support of Their Motion for Summary Judgment.
3. Attached hereto as Exhibit 1 is the Amended Complaint in *Skattevorvaltningen v. RJM Capital Pension Plan and Richard Markowitz*, Civil No. 19-cv-01898-LAK (S.D.N.Y.).
4. Attached hereto as Exhibit 2 is the Amended Complaint in *Skattevorvaltningen v. Basalt Ventures LLC Roth 401(K) Plan, et al.*, Civil No. 19-cv-01866-LAK (S.D.N.Y.).
5. Attached hereto as Exhibit 3 is the Amended Complaint in *Skattevorvaltningen v. Roadcraft Technologies LLC Roth 401(K) Plan, et al.*, Civil No. 19-cv-01812-LAK (S.D.N.Y.).

6. Attached hereto as Exhibit 4 is the Amended Complaint in *Skattevorvaltningen v. The Proper Pacific LLC 401K Plan and Doston Bradley*, Civil No. 18-cv-04051-LAK (S.D.N.Y.).

7. Attached hereto as Exhibit 5 is the Amended Complaint in *Skattevorvaltningen v. The FWC Capital LLC Pension Plan and Roger Lehman*, Civil No. 18-cv-10098-LAK (S.D.N.Y.).

8. Attached hereto as Exhibit 6 is the Amended Complaint in *Skattevorvaltningen v. American Investment Group of New York, L.P. Pension Plan, et al.*, Civil No. 18-cv-09841-LAK (S.D.N.Y.).

9. Attached hereto as Exhibit 7 is the Amended Complaint in *Skattevorvaltningen v. Riverside Associates Defined Benefit Plan, et al.*, Civil No. 18-cv-09840-LAK (S.D.N.Y.).

10. Attached hereto as Exhibit 8 is the Expert Report of Stephen Shay dated December 31, 2021.

11. Attached hereto as Exhibit 9 is the Expert Report of Fred Reish dated December 31, 2021.

12. Attached hereto as Exhibit 10 is the Rebuttal Report of Fred Reish dated February 1, 2022.

13. Attached hereto as Exhibit 11 is the Reply Report of Fred Reish dated February 28, 2022.

14. Attached hereto as Exhibit 12 is the Expert Report of Emre Carr dated December 31, 2021.

15. Attached hereto as Exhibit 13 is the Rebuttal Report of Emre Carr dated February 1, 2022.

16. Attached hereto as Exhibit 14 is the Reply Report of Emre Carr dated February 28, 2022.

17. Attached hereto as Exhibit 15 is the Expert Report of Adam L. Warren dated December 31, 2021.

18. Attached hereto as Exhibit 16 is the Reply Report of Adam L. Warren dated February 28, 2022.

19. Attached hereto as Exhibit 17 is the Expert Report of Max. F. Hayden dated February 1, 2022.

20. Attached hereto as Exhibit 18 is the First Expert Report of Richard Salter QC dated February 1, 2022.

21. Attached hereto as Exhibit 19 is the Second Expert Report of Richard Salter QC dated February 28, 2022.

22. Attached hereto as Exhibit 20 is the document previously marked as deposition exhibit 3014, and an English translation.

23. Attached hereto as Exhibit 21 is the document previously marked as deposition exhibit 3173, Bates-stamped SKAT_MDL_001_00375531, and an English translation.

24. Attached hereto as Exhibit 22 is the document previously marked as deposition exhibit 3150, Bates-stamped SKAT_MDL_001_00375548, and an English translation.

25. Attached hereto as Exhibit 23 is the document previously marked as deposition exhibit 3002, Bates-stamped SKAT_MDL_001_00281025, and an English translation.

26. Attached hereto as Exhibit 24 is the document previously marked as deposition exhibit 3052, Bates-stamped SKAT_MDL_001_00517918, and an English translation.

27. Attached hereto as Exhibit 25 is the document previously marked as deposition exhibit 3970, Bates-stamped SKAT_MDL_001_00603756, and an English translation.

28. Attached hereto as Exhibit 26 is the document previously marked as deposition exhibit 3178, Bates-stamped SKAT_MDL_001_00376851, and an English translation.

29. Attached hereto as Exhibit 27 is the document previously marked as deposition exhibit 3171, Bates-stamped SKAT_MDL_001_00524599, and an English translation.

30. Attached hereto as Exhibit 28 is the document previously marked as deposition exhibit 3172, Bates-stamped SKAT_MDL_001_00376858, and an English translation.

31. Attached hereto as Exhibit 29 is the document previously marked as deposition exhibit 3008, Bates-stamped SKAT_MDL_001_0075124, and an English translation.

32. Attached hereto as Exhibit 30 is the document previously marked as deposition exhibit 3003, Bates-stamped SKAT_MDL_001_00281058, and an English translation.

33. Attached hereto as Exhibit 31 is the document previously marked as deposition exhibit 3004, Bates-stamped SKAT_MDL_001_00375736, and an English translation.

34. Attached hereto as Exhibit 32 is the document previously marked as deposition exhibit 3009, Bates-stamped SKAT_MDL_001_00281103, and an English translation.

35. Attached hereto as Exhibit 33 is a page that is intentionally left blank.

36. Attached hereto as Exhibit 34 is the document previously marked as deposition exhibit 3026, and an English translation.

37. Attached hereto as Exhibit 35 is the document previously marked as deposition exhibit 3985, Bates-stamped SKAT_MDL_001_00278619, and an English translation.

38. Attached hereto as Exhibit 36 is the document previously marked as deposition exhibit 3153, Bates-stamped SKAT_MDL_001_00346017, and an English translation.

39. Attached hereto as Exhibit 37 is an excerpt from the document previously marked as deposition exhibit 3007, containing pages Bates-stamped SKAT_MDL_001_0075845, SKAT_MDL_001_0075876, SKAT_MDL_001_0075905, and an English translation of each.

40. Attached hereto as Exhibit 38 is Plaintiff SKAT's Amended Response to Interrogatory No. 10.

41. Attached hereto as Exhibit 39 is an excerpt from the deposition transcript of Christian Ekstrand.

42. Attached hereto as Exhibit 40 is an excerpt from the deposition transcript of Lisbeth Rømer.

43. Attached hereto as Exhibit 41 is an excerpt from the deposition transcript of Bo Daugaard.

44. Attached hereto as Exhibit 42 is an excerpt from the deposition transcript of Jens Brochner.

45. Attached hereto as Exhibit 43 is an excerpt from the deposition transcript of Jette Zester.

46. Attached hereto as Exhibit 44 is an excerpt from the deposition transcript of Leif N. Jeppesen.

47. Attached hereto as Exhibit 45 is an excerpt from the deposition transcript of Dorthe Pannerup Madsen.

48. Attached hereto as Exhibit 46 is an excerpt from the deposition transcript of Richard Markowitz.

49. Attached hereto as Exhibit 47 is an excerpt from the deposition transcript of Helen Sorensen.

50. Attached hereto as Exhibit 48 is an excerpt from the deposition transcript of Graham Wade.

51. Attached hereto as Exhibit 49 is an excerpt from the deposition transcript of Anne Munksgaard.

52. Attached hereto as Exhibit 50 is an excerpt of the document bundle produced in connection with the deposition of SKAT's Rule 30(b)(6) designee containing pages 125-127 and 145-177 thereof.

53. Attached hereto as Exhibit 51 is a document, Bates-stamped SKAT_MDL_00000356, and produced in discovery in this matter.

54. Attached hereto as Exhibit 52 is a document, Bates-stamped WH_MDL_00029161, and produced in discovery in this matter.

55. Attached hereto as Exhibit 53 is a document, Bates-stamped WH_MDL_00356591, and produced in discovery in this matter.

56. Attached hereto as Exhibit 54 is a document, Bates-stamped WH_MDL_00356595, and produced in discovery in this matter.

57. Attached hereto as Exhibit 55 is a document, Bates-stamped WH_MDL_00357014, and produced in discovery in this matter.

58. Attached hereto as Exhibit 56 is a copy of FCA Conduct of Business Sourcebook (COBS), Section 16.2, which was accessed on April 27, 2022 via the following web address:
<https://www.handbook.fca.org.uk/handbook/COBS.pdf>.

59. Attached hereto as Exhibit 57 is SEC Rule 10b-10, which was accessed on April 27, 2022 via the sec.gov website.

60. Attached hereto as Exhibit 58 is FINRA Rule 2232, which was accessed on April 27, 2022 via the finra.org website.

61. Attached hereto as Exhibit 59 is a document, Bates-stamped JPM00002214, and produced in discovery in this matter.

62. Attached hereto as Exhibit 60 is a printout of the webpage accessed on April 26, 2022 through the following address: “<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/statement-of-policy/2019/pillar-2-liquidity-sop-update-june-2019.pdf?la=en&hash=78618B0A466B17BCF86952AAD06AC14AEE3E4FDE>”.

63. Attached hereto as Exhibit 61 is a document, Bates-stamped FWCCAP00000141, and produced in discovery in this matter.

64. Attached hereto as Exhibit 62 is a document, Bates-stamped FWCCAP00000228, and produced in discovery in this matter.

65. Attached hereto as Exhibit 63 is a document, Bates-stamped PROPPACIF00000098, and produced in discovery in this matter.

66. Attached hereto as Exhibit 64 is a document, Bates-stamped PROPPACIF00000109, and produced in discovery in this matter.

67. Attached hereto as Exhibit 65 is a document, Bates-stamped PROPPACIF00000147, and produced in discovery in this matter.

68. Attached hereto as Exhibit 66 is a copy of the Convention Between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-Belg., art. 26(1), Nov. 27, 2006, S. Treaty Doc. No. 110 (“U.S.-Belgium Treaty”).

69. Attached hereto as Exhibit 67 is a copy of the Protocol Amending the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, U.S.-Can., art. 15, ¶ 2, Sept. 26, 1980, T.I.A.S. 11087 (“Canadian Protocol”).

70. Attached hereto as Exhibit 68 is a copy of the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Double Taxes on Income, U.S.-Neth., art. 31, ¶ 2, Dec. 18, 1992, 2291 U.N.T.S. 3 (“U.S.-Netherlands Treaty”).

71. Attached hereto as Exhibit 69 is a copy of the Protocol Amending the Convention Between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Japan-U.S., art. XIII, ¶ 5, Nov. 6, 2003, T.I.A.S. 19-830 (2019) (“Japanese Protocol”).

72. Attached hereto as Exhibit 70 is a copy of the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, U.S.-Fr., art. 28, Aug. 31, 1963 U.N.T.S. 67.

73. Attached hereto as Exhibit 71 is a copy of the Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-Swed., art. 27, Sept. 1, 1994, T.I.A.S. 06-831.

74. Attached hereto as Exhibit 72 is a copy of the October 23, 1924 decision of the Eastern Provincial Court in Denmark, available in Annual Digest of Public International Law Cases 263-64 (1933).

75. Attached hereto as Exhibit 73 is a true and correct copy of excerpts of the deposition transcript of Ronald Altbach taken on October 30, 2022.

76. Attached as Exhibit 74 is a copy of the document bearing Bates numbers WH_MDL_00025060 to WH_MDL_00025160, produced in this litigation.

77. Attached hereto as Exhibit 75 is a document, Bates-stamped SKAT_MDL_001_008120, and produced in discovery in this matter.

78. Attached hereto as Exhibit 76 is an excerpt from the deposition transcript of Bruce Dubinsky.

79. Attached hereto as Exhibit 77 is a document, Bates-stamped WH_MDL_00022067, and produced in discovery in this matter.

80. Attached hereto as Exhibit 78 is a document, Bates-stamped JHVM_0003820, and produced in discovery in this matter.

81. Attached as Exhibit 79 is a copy of the document Bates-stamped MBJ_0005107 to MBJ_0005109, produced in this litigation.

82. Attached as Exhibit 80 is a copy of the document Bates-stamped WH_MDL_00029587 to WH_MDL_00029601, produced in this litigation.

83. Attached as Exhibit 81 is a copy of the document Bates-stamped SKAT_MDL_001_00056868 to SKAT_MDL_001_00056869, produced in this litigation.

84. Attached as Exhibit 82 is a copy of the document bearing Bates numbers SKAT_MDL_001_00056852 to SKAT_MDL_001_00056880, produced in this litigation.

85. Attached hereto as Exhibit 83 is a true and correct copy of Plaintiff SKAT's Responses and Objections to Defendants' First Set of Contention Interrogatories dated July 15, 2021.

86. Attached hereto as Exhibit 84 is a certified translation of an email exchange, provided by counsel for SKAT, and corresponding to a Danish-language original the relevant portions of which were produced in discovery as SKAT_MDL_001_00411550 - SKAT_MDL_001_00411553.

87. Attached hereto as Exhibit 85 is a copy of a document Bates-stamped WH_MDL_00002401 - WH_MDL_00002404, produced in this litigation.

88. Attached hereto as Exhibit 86 is a copy of a document Bates-stamped WH_MDL_00002397 - WH_MDL_00002400, produced in this litigation.

89. Attached hereto as Exhibit 87 is an excerpt of the Rebuttal Report of Marcia S. Wagner, dated February 1, 2022.

90. Attached hereto as Exhibit 88 is an excerpt of the Report of Marcia S. Wagner, dated December 31, 2021.

I, Nicholas S. Bahnsen, declare under penalty of perjury that the foregoing is true and correct.

Dated: April 29, 2022
New York, NY



Nicholas S. Bahnsen